

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**MARK FALCONE,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 2:08 CV 78  
(Maxwell)**

**COMMISSIONER OF  
SOCIAL SECURITY,**

**Defendant.**

**ORDER**

On August 18, 2009, Magistrate Judge John S. Kaull filed his Report and Recommendation in the above-styled matter wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. The Defendant filed objections on September 1, 2009. This matter now appears ripe for review.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised in the parties' memorandums were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. The Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the proposed Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Moreover, upon consideration of the Defendant's objections, the Court finds that the Plaintiff has not raised any issues that were not considered by the Magistrate Judge in his Report and Recommendation. Therefore, it is

**ORDERED** that Magistrate Judge Kaul's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Defendant's Motion for Summary Judgment be, and the same hereby is, **DENIED**. It is further

**ORDERED** that the Plaintiff's Motion for Summary Judgment be, and the same hereby is, **GRANTED in part**. It is further

**ORDERED** that this matter is **REVERSED AND REMANDED** to the Commissioner pursuant to the fourth sentence of 42 U.S.C. §405(g) for further action in accordance with the Report and Recommendation. It is further

**ORDERED** that Plaintiff's Motion to Supplement the Record shall be, and the same hereby is, **GRANTED**; however, insofar as the Motion may be construed as a Motion for Remand for New and Material Evidence, the motion shall be, and the same hereby is, **DENIED as moot**. It is further

**ORDERED** that the Clerk of Court shall enter judgment reversing the decision of the Defendant and remanding the case to the Defendant for further proceedings and shall thereafter **DISMISS** this action from the docket of the Court.

Counsel for the Plaintiff is advised that an application for attorney's fees under the Equal Access to Justice Act (EAJA), if one is to be submitted, must be filed within 90 days from the date of the judgment order.

The Clerk of Court is directed to enter a separate judgment order and to send a copy of this Order to all counsel of record.

**ENTER:** September 30<sup>th</sup>, 2009

**/s/ Robert E. Maxwell**  
United States District Judge